

sufficient reason, was postponed, and that notice was then publicly given, that it would be had at the time and place at which it was actually made; and when it is recollected, that the property lay in and about the town of St. Michaels, the policy of such change of place, is readily seen.

The trustee who made the sale, is now dead, and nearly twenty years have elapsed, and under such circumstances, to require of the purchasers, who have complied, and paid their money, to prove by positive evidence, a compliance by the trustee with this regulation, would, it appears to me, be a hard measure of justice. The court may presume that notice was given, and indeed when the proof shows, that a large number of persons were present, such a presumption can scarcely be avoided.

Next it is objected, that the trustee did not make a report of his sales, as directed by the decree.

But, I apprehend, the title of the purchaser cannot depend absolutely upon the performance by the trustee, of this part of his duty. If it did, it is obvious, that in many cases, from death, and other causes, the title of purchasers might be defeated. This court may, I think, if satisfactorily convinced that a sale has been made by its agent, though that agent has not informed it, in the mode directed—that is, by a report—approve and ratify the sale. To show that the title of purchasers are not made to depend upon the full compliance by trustees with their duty as prescribed by the decree, the case of Ramsay's estate has been referred to, in which a sale was ratified, though the trustee gave no bond.

In addition to these objections, the statute of frauds has been urged, not by way of plea, or exception to the sale, made in writing, but *ore tenus*, and by way of argument. It may, I think, upon authority, and upon principle, be very well doubted, whether sales made by trustees under the authority of our equity courts, are within the statute of frauds. In 2 *Daniel's Prac.*, 752, it is said, that sales before a master of the court, under a decree or order, are not within the statute of frauds. And, in the case of the Attorney General vs. Day, Lord Hardwicke said,